

**LEWIS  
AND  
ROCA**  
—LLP—  
LAWYERS

E-Filed on 1/7/10

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Facsimile (702) 949-8321  
Telephone (702) 949-8320

Rob Charles NV State Bar No. 006593  
Email: rcharles@lrlaw.com  
John Hinderaker AZ State Bar No. 018024  
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,<sup>1</sup>

USA SECURITIES, LLC,<sup>2</sup>

Debtors.

**Affects:**

- ☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>1</sup>  
Case No. BK-S-06-10729-LBR<sup>2</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**OBJECTION OF USACM TRUST TO  
PROOFS OF CLAIM BASED, IN  
WHOLE OR IN PART, UPON  
INVESTMENT IN RIVIERA HOMES  
FOR AMERICA HOLDING LOAN;  
AND CERTIFICATE OF SERVICE**

Date of Hearing: February 5, 2010  
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the “USACM Trust”) moves under § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order disallowing the Proof of Claim filed by individual investors (“Direct Lenders”) against USA

<sup>1</sup> This bankruptcy case was closed on October 12, 2007.

<sup>2</sup> This bankruptcy case was closed on December 26, 2007.

1 Commercial Mortgage Company (“USACM”) to the extent such claims are based upon an  
2 investment in the Riviera Homes For America Holding Loan (the “HFA Riviera Loan”).  
3 This Objection is supported by the Court’s record and the Declaration of Edward M. Burr  
4 in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment in the  
5 Riviera Loan filed with the Court on January 10, 2008, [DE 5616] (the “Burr Decl.”).

6 **I. INTRODUCTION**

7 On May 26, 2006, the borrower paid off the HFA Riviera Loan in full. In turn,  
8 USACM distributed the proceeds to the Direct Lenders who were paid in full, subject to  
9 servicing fees and any other charges under their respective Loan Servicing Agreements  
10 and this Court’s orders, including the Confirmation Order. This Objection seeks an order  
11 from the Court disallowing Direct Lender claims to the extent they are based upon an  
12 investment in the HFA Riviera Loan. To the extent a Direct Lender claim is based upon  
13 an investment in a different loan, it will not be impacted by this Objection.

14 **II. JURISDICTION**

15 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
16 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core  
17 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

18 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and  
19 Bankruptcy Rule 3007.

20 **III. BACKGROUND**

21 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA  
22 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital  
23 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC  
24 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary  
25 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate  
26 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of

1 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the  
2 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC  
3 ("Mesirow"), who served as the Chief Restructuring Officer.

4 USACM was a Nevada corporation that, prior to the Petition Date, was in the  
5 business of underwriting, originating, brokering, funding and servicing commercial loans  
6 primarily secured by real estate, both on behalf of investors and for its own account. That  
7 business included the solicitation of individual investors to purchase fractional interest in  
8 loans that USACM originated and then serviced. These investors, totaling approximately  
9 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's bankruptcy  
10 case and in this Objection. Although USACM serviced and sometimes originated the  
11 loans in which the Direct Lenders invested, generally USACM was not a borrower on  
12 these loans.

13 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third  
14 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.  
15 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to  
16 USACM with respect to standing to seek allowance and disallowance of Claims. The  
17 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.  
18 Geoffrey L. Berman is the Trustee.

19 The spreadsheet attached as **Exhibit A** lists Proofs of Claim filed by Direct Lenders  
20 that appear to be based, in whole or in part, upon an investment in the HFA Riviera Loan.  
21 **Exhibit A** shows the Proof of Claim number, the claimant, the claimant's address, the  
22 total amount of the claim and the total amount of the claim that appears to be related to an  
23 investment in the HFA Riviera Loan based upon the information provided by the  
24 claimant. The claims listed in **Exhibit A** are referred to hereafter as the HFA Riviera  
25  
26

1 Claims. A copy of the first page of the proof(s) of claim listed on **Exhibit A** is attached  
2 as **Exhibit B**.

3 On or about May 26, 2006, the HFA Riviera Loan was paid off in full, as reflected  
4 in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM processed  
5 the payoff and distributed the proceeds to the Direct Lenders on the HFA Riviera Loan.  
6 *Id.* The Direct Lenders were in turn paid in full for their investment in the HFA Riviera  
7 Loan, subject to servicing fees and any other charges under their respective Loan  
8 Servicing Agreements and this Court's orders, including the Confirmation Order. (Burr  
9 Decl. ¶ 9.) In general, the Direct Lenders received their principal and interest on the HFA  
10 Riviera Loan, less sums withheld for servicing fees, servicer advances, Prepaid Interest  
11 and sums known as the 2% Holdback pursuant to the confirmed Plan. *Id.* On the  
12 Effective Date of the Plan, the Prepaid Interest was applied, a portion of the 2% Holdback  
13 was applied to the allowed claims of the Direct Lender Committee, and the balance paid to  
14 the Direct Lenders. *Id.* Accordingly, the USACM Trust no longer has further obligations  
15 to the Direct Lenders arising out of the HFA Riviera Loan. (Burr Decl. ¶ 10.)

16 **IV. OBJECTION**

17 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed  
18 will be allowed unless a party in interest objects. If a party in interest objects to the proof  
19 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and  
20 shall allow the Claim except to the extent that the Claim is "unenforceable against the  
21 debtor . . . under any . . . applicable law for a reason other than because such claim is  
22 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to  
23 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the confirmed  
24 Plan, as the deadline for such objections has been extended to February 5, 2010, by this  
25 Court's orders.  
26

1 The USACM Trust objects to the HFA Riviera Claim and requests that the Court  
2 disallow the claims listed in **Exhibit A** to the extent those claims are based upon a Direct  
3 Lender investment in the HFA Riviera Loan because the Direct Lenders were paid in full  
4 on their investments in HFA Riviera Loan. The USACM Trust asks that the Court sustain  
5 this objection and grant such other and further relief as is just and proper.

6 Dated: January 7, 2010.

7 LEWIS AND ROCA LLP

8  
9 By /s/ John C. Hinderaker

10 Rob Charles, NV 6593

11 John C. Hinderaker, AZ 18024 (*pro hac vice*)

12 3993 Howard Hughes Parkway, Suite 600

13 Las Vegas, Nevada 89169

14 Telephone: (702) 949-8200

15 Facsimile: (702) 949-8398

16 E-mail: rcharles@lrlaw.com

17 *Attorneys for the USACM Liquidating Trust*

18 Copy of the foregoing and pertinent

19 Portion of Exhibit A and Exhibit B

20 mailed by first class

21 Postage prepaid U.S. mail

22 On January 7, 2010 to:

23 All parties in interest listed on

24 Exhibit A attached

25 /s/ Leilani Lista

26 Leilani Lista

Lewis and Roca LLP